In the Supreme Court of the United States.

OCTOBER TERM, 1921.

FIDELITY & DEPOSIT COMPANY OF MARYLAND, appellant,
v.
THE UNITED STATES.
No. 207.

APPEAL FROM THE COURT OF CLAIMS.

APPELLEE'S SUPPLEMENTAL BRIEF.

In its reply brief appellant seems to think that appellee should not have spoken of the deposits as being permanently invested. Appellee took the position and still maintains that as the appellant says that the capital stock and surplus were permanently invested because they were invested in bonds, stocks, etc., and locked in its vaults, the deposits were just as permanently invested because they were also invested in stocks and bonds, kept in separate envelopes and placed in the company's vaults in just the same manner.

Appellant also excepts to appellee's statement that the profits from its banking business amounted to

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over $570,000 in the four years. It seems to think that appellee should have used the word "income." Webster's New International Dictionary defines the word "income" as follows:

> The total receipts from any branch of business are known as the *gross* income. That portion of the receipts which remain after paying wages and for materials is known as *net* income.

Appellee, of course, meant the gross profits. The amount of profits very plainly appears on page 21 of the transcript and appellee could have had no sinister purpose in speaking of the gross profits as profits, as long as appellee did not call them net profits.

Appellee is perfectly willing to stand corrected on the fact that instead "of a *part* of the deposits being invested," *all* of the deposits were invested in stocks, bonds, etc.

Appellant also complains because appellee said "that securities representing the investments of *much* of plaintiff's capital assets were kept in separate packages." Appellee still insists that *much* of the capital was so invested. But contrary to the argument of appellant, appellee believes that all of the assets of appellant constituted its capital.

Appellant cites the case of *Henry, Executor,* v. *United States,* 251 U. S. 393, as sustaining its contention that the statute of limitations does not govern in the case at bar. From the decision in that case, I can not learn why or how the question of limita-

tions is raised. It is apparent, however, that whatever question was raised by the Government was waived by the Solicitor General. This being true, the question was not considered by the court and there is nothing in that case to guide the court in considering the two-year statute in the case at bar.

In the case cited by appellant, entitled *Tiffany, Executor*, v. *United States* (252 U. S. 590, 55 C. Cls. 519, 534), nothing appears in any one of those references to show what error was confessed in the upper court or what question was at issue in either court.

In any event the Government does not believe that it is bound by any confession of error by any of its representatives.

Appellee is still of the very decided opinion that the judgment of the lower court should be affirmed.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.
ROBERT H. LOVETT,
Assistant Attorney General.

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